IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 816 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMED IMRAN @ DALU MOHAMMED@ MUNAI MUNSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 816 of 2002

MR MM TIRMIZI for Petitioner No. 1

MR DP JOSHI, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/02/2002

ORAL JUDGEMENT

1. Mr. Varma, learned advocate appearing for Mr. Tirmizi, learned advocate for the petitioner, places on record a communication received by the detenu intimating him about rejection of the representation made on his behalf on the 28th December, 2001. Mr. Joshi places on

record affidavit-in-reply sworn by the Under Secretary, record affidavit-in-reply sworn by the Under Secretary, Home Department.

2. The petitioner has been detained by an order passed by the Commissioner of Police, Surat City, Surat, on the 5th November, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration two offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Varma, learned advocate appearing for Mr. Tirmizi, learned advocate appearing for the petitioner, contended that a representation was made on behalf of the detenu on December 28, 2001, along with supporting affidavits controverting the say of the anonymous witnesses. which was received by the detaining authority on November 2, 2001. The said representation has been rejected by the State Government without undertaking the exercise of verifying whether the version given by the deponent in the affidavit or the version given by the anonymous witnesses was correct. He submitted that this has affected the right of the detenu of making an effective representation and, therefore, the continued detention is vitiated. He, therefore, urged that the petition may be allowed and the order of detention may be quashed and set aside.

4. Mr. Joshi, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, petition deserves to be allowed on the ground the authority has not properly considered the representation made on behalf of the detenu. The representation was sent to the authority along with supporting affidavits controverting the say of the anonymous witnesses. However, the said representation has been rejected by the State Government without undertaking the exercise of verifying whether the

version given by the deponent in the affidavit or the version given by the anonymous witnesses was correct. The representation, therefore, cannot be said to have been properly considered by the authority. It amounts to denial of right of the detenu of making an effective representation envisaged under Section 22(5) of the Constitution and the continued detention of the detenu is, therefore, vitiated. The petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 5th November, 2001, passed against the detenu is hereby quashed. The detenu-Mohammed Imran @ Alu Mohammed Shafi @ Munai Munshi is ordered to be set at liberty, if not required in any other matter. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

gt